

ORDINANCE NO. 784

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLEASANT HILL  
AMENDING THE PLEASANT HILL MUNICIPAL CODE TO RECOGNIZE I-680 AS A  
PHYSICAL BARRIER TO SECONDARY ADVERSE EFFECTS OF ADULT USES AND TO  
CHANGE THE METHOD OF MEASURING DISTANCES BETWEEN ADULT USES  
AND SENSITIVE USES WHERE SUCH A PHYSICAL BARRIER EXISTS

WHEREAS, the City Council finds that it is necessary and appropriate to amend Section 35-20.4 of the Zoning Ordinance of the Pleasant Hill Municipal Code as it relates to the recognition of barriers to adverse secondary effects of adult businesses and to the measurement of distances between adult uses and sensitive uses where such barriers exist; and

WHEREAS, on March 22, 2004, the City Council directed staff to prepare an amendment to Division 35-20 Adult Use Ordinance which results in excluding Buchanan Field Golf Course as a sensitive use. Staff was directed to accomplish this purpose with a recommendation of the most appropriate approach; and

WHEREAS, definite and specified locational requirements are necessary irrespective of whether physical barriers are present between an adult use and sensitive uses in order to ensure that adverse secondary effects on such sensitive uses caused by adult uses are mitigated to the maximum extent possible; and

WHEREAS, Interstate 680 (I-680) is an eight lane north-south freeway through Pleasant Hill, with on-off ramps at Contra Costa Boulevard, Chilpancingo Parkway, Concord Avenue, Willow Pass Road, Monument Boulevard/Gregory Lane and Treat Boulevard/Geary Road; and

WHEREAS, the City Council recognizes and has reasonable basis to believe that I-680 serves as a physical barrier to secondary adverse effects; and

WHEREAS, because of the existence of certain improved pedestrian connections above and beneath I-680 and roadways accessible to pedestrians and vehicles, the City also recognizes that I-680 is not an impermeable barrier and therefore recognizes the application of alternative methods for calculating distances; and

WHEREAS, on May 25, 2004, the Planning Commission held a duly-noticed public hearing during which it received input and testimony from the public concerning the subject of recognition of I-680 as a physical barrier and the change of method of measuring distances between adult uses and sensitive uses where that physical barrier exists; and

WHEREAS, on May 25, 2004, the Planning Commission adopted Resolution No. 11-04, recommending denial of the proposed amendment to the City Council; and

WHEREAS, on June 7, 2004, the City Council held a duly-noticed public hearing during which it received input and testimony from the public concerning the subject of recognition of I-680 as a physical barrier and the change of method of measuring distances between adult uses and sensitive uses where that physical barrier exists; and

WHEREAS, the City Council, in adopting this Ordinance, takes legislative notice of the existence and content of the following studies concerning the adverse secondary effects of adult businesses in other cities: Garden Grove, California (1991); Tucson, Arizona (1990); Seattle, Washington, Department of Construction and Land Use (1989); Austin, Texas, Office of Land Development Services (1986); Oklahoma City, Oklahoma (1986); Indianapolis, Indiana, Department of Metropolitan Development (1984); Houston, Texas, City Council Report (1983 and 1997); Beaumont, Texas (1982); Minnesota Crime Prevention Center, Inc., Minneapolis (1980); Phoenix, Arizona (1979); Los Angeles, California, Department of City Planning (1977); Amarillo, Texas, Planning Department (1977); and Cleveland, Ohio (1977); New York, New York (1994); Newport News, Virginia (1996); Times Square, New York City (1994); Whittier, California (1978); Adams County, Colorado (1990); Dallas, Texas (1997); and El Paso, Texas (1986). The City Council finds that these studies are relevant to the problems addressed by the City in amending this Ordinance to regulate the adverse secondary effects of adult businesses. They are available for public review in the office of the City Clerk; and

WHEREAS, while the City Council desires to protect the rights conferred by the United States Constitution to adult businesses, it does so in a manner that ensures the continued and orderly use and development of property within the City and diminishes, to the greatest extent feasible, those undesirable adverse secondary effects which the above mentioned studies have shown to be associated with the operation of adult businesses; and

WHEREAS, in adopting this Ordinance, the City Council is mindful of legal principles relating to regulation of adult businesses, and the City Council does not intend to suppress or infringe upon any expressive activities protected by the First Amendment of the United States and California Constitutions but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of adult businesses. The City Council has considered decisions of the United States Supreme Court regarding local regulation of adult businesses, including but not limited to: *City of Los Angeles v. Alameda Books*, 535 U.S. 425, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002); *City of Erie v. Pap's A.M. ("Kandyland")*, 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986); and *Young v. American Mini Theaters, Inc.*, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); decisions of the United States Court of Appeals for the Ninth Circuit, including but not limited to: *Diamond v. City of Taft*, 215 F.3d 1052 (9th Cir. 2000), *cert. denied* 531 U.S. 1072 (2001); *Isbell v. City of San Diego*, 258 F.3d 1108 (9th Cir. 2001); *Young v. City of Simi Valley*, 216 F.3d 807 (9th Cir. 2000), *cert. denied* 531 U.S. 1104 (2001); *Lim v. City of Long Beach*, 217 F.3d 1050 (9th Cir. 2000), *cert. denied* 121 S.Ct. 1189 (2001); *Alameda Books v. City of Los Angeles*, 222 F.3d 719 (9th Cir. 2000), *cert. granted* 121 S.Ct.

1223 (2001); *Baby Tam & Co., Inc. v. City of Las Vegas* ("Baby Tam I"), 154 F.3d 1097 (9th Cir. 1998); *Baby Tam & Co., Inc. v. City of Las Vegas* ("Baby Tam II"), 199 F.3d 1111 (9th Cir. 2000); *Baby Tam & Co., Inc. v. City of Las Vegas* ("Baby Tam III"), 247 F.3d 1003 (9th Cir. 2001); *4805 Convoy, Inc. v. City of San Diego*, 183 F.3d 1108 (9th Cir. 1999); *Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524 (9th Cir. 1993), *cert. denied* 511 U.S. 1030 (1994); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), *cert. denied* 529 U.S. 1053 (2000); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); several California cases, including but not limited to: *Tily B., Inc. v. City of Newport Beach*, 69 Cal.App.4th 1 (1998); *City of National City v. Wiener*, 3 Cal.4th 832 (1993), *cert. denied* 510 U.S. 824; *People v. Superior Court* ("Lucero") 49 Cal.3d 14 (1989); *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board of California* ("Vicary"), 99 Cal.App.4th 880 (2002); and *City of Vallejo v. Adult Books*, 167 Cal.App.3d 1169 (1985), *cert. denied* 475 U.S. 1064 (1986); and other federal cases, including but not limited to: *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123 (3rd Cir. 1993); *Lakeland Lounge v. City of Jacksonville*, 973 F.2d 1255 (5th Cir. 1992), *cert. denied* 507 U.S. 1030 (1993); *International Eateries v. Broward County*, 941 F.2d 1157 (11th Cir. 1991), *cert. denied* 503 U.S. 920 (1992); and *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074 (5th Cir. 1986). The cases and their summaries are available for public review in the office of the City Clerk; and

WHEREAS, the City Council recognizes the possible harmful effects on children and minors exposed to the effects of adult businesses and recognizes the need to enact regulations which will minimize and/or eliminate such exposure. The City Council takes legislative notice of the Penal Code provisions authorizing local governments to regulate matter that is harmful to minors (California Penal Code § 313 *et seq.*). The City Council further takes legislative notice of the cases that recognize that protection of minors from sexually explicit materials is a compelling government interest, including *Crawford v. Lungren*, 96 F.3d 380 (9th Cir. 1996), *cert. denied* 520 U.S. 1117 (1997) and *Berry v. City of Santa Barbara*, 40 Cal.App.4th 1075 (1995). The cases and their summaries are available for public review in the office of the City Clerk; and

WHEREAS, the City Council recognizes and relies on the findings set forth in the 1986 Attorney General's Report on Pornography in support of this Amendment, which is available for public review in the office of the City Clerk; and

WHEREAS, the City Council recognizes that zoning, licensing or regulatory permits, and operating standards are a legitimate and reasonable means of ensuring that adult businesses are located in places and conducted in a manner so as to minimize their adverse secondary effects and to help assure that such operators, businesses, licensees and permittees comply with reasonable regulations related to such requirements to minimize and control problems associated with such businesses and thereby protect the health, safety, and welfare of Pleasant Hill residents, protect citizens from increased crime, preserve the quality of life, preserve property values and the character of surrounding neighborhoods and businesses, and deter the spread of urban blight; and

WHEREAS, the performance and operational requirements contained in the City's

Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult businesses in the City of Pleasant Hill and a sufficient and reasonable number of alternative locations for adult businesses are provided by the City of Pleasant Hill. The City Council takes legislative notice of the United States Supreme Court decision in *Renton* that requires the City provide adult businesses a reasonable opportunity to open and operate. The City Council also takes legislative notice of the Ninth Circuit's decision in *Topanga Press, Lim v. City of Long Beach* and *Isbell v. City of San Diego* with respect to availability of sites for adult businesses and finds that there are sufficient sites available for adult businesses within the City; and

WHEREAS, the City Council takes note of the proliferation of adult material on the Internet, cable television satellite television, direct television, CDs, DVDs, and that these various media provide alternative avenues of communication. The City Council also considers and relies on published decisions examining the proliferation of communications on the Internet. *Reno v. American Civil Liberties Union*, 521 U.S. 844, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997) [the principal channel through which many Americans now transmit and receive sexually explicit communication is the Internet]; *Anheuser-Busch v. Schmoke*, 101 F.3d 325, 329 (4th Cir. 1996), *cert. denied* 520 U.S. 1204 (1997) [the Fourth Circuit rejected a First Amendment challenge to a Baltimore ordinance restricting alcohol advertisements on billboards acknowledging that the Internet is one available channel of communication]; *U.S. v. Hockings*, 129 F.3d 1069 (9th Cir. 1997); *see also U.S. v. Thomas*, 74 F.3d 701 (6th Cir. 1996), *cert. denied* 519 U.S. 820 [recognizing the Internet as a medium for transmission of sexually explicit material in the context of obscenity prosecutions]. The emergence of the Internet brings with it a virtually unlimited additional source of adult oriented sexual materials available to interested persons in every community with a mere keystroke. An adult business no longer has to be physically located in a City to be available in the community; and

WHEREAS, this proposed Zoning Ordinance amendment is consistent with the City of Pleasant Hill's general plan as the health, safety and welfare of the general public is promoted through the lawful regulation of adult uses under the provisions of Division 35-20 of the Zoning Ordinance and particularly by the locational limitations of the proposed amendment which protect potentially sensitive uses from adult uses; and

WHEREAS, the City Council adopted the Mitigated Negative Declaration and Mitigation Monitoring Program for this Zoning Ordinance Amendment in City Council Resolution No. 32-04.

NOW, THEREFORE, the City Council of the City of Pleasant Hill does ordain that based on the recitals set forth above which are hereby incorporated fully by reference as findings, the Zoning Ordinance of the Pleasant Hill Municipal Code is amended as follows:

**Section 1.** A new Section 35-20.4.B.6, is added to Chapter 35, Planning and Land Use, of the Pleasant Hill Municipal Code to read as follows:

“6. The method for measuring the distance referenced in Sections 35-20.4.B.1,

B.2 and B.5 shall not apply when the adult business location or proposed adult use is separated from a residential, school, or park land use designation by Interstate 680 (I-680). Where the I-680 separation exists, the distance shall first be measured along a straight line extended between two points from the nearest exterior wall of the facility housing the adult use or proposed adult use to the closest improved pedestrian connection above or beneath I-680 or roadways which are accessible by pedestrians or vehicles, whichever is less. The measurement shall continue under or over I-680 along the improved pedestrian connection or roadway and proceed along a straight line to the nearest property line included within the residential, school or park land use designation. An “improved pedestrian connection” is defined as an elevated overhead pedestrian access bridge or sidewalk or below street grade pedestrian access tunnel below finished grade of I-680.”

**Section 2.** A new Section 35-20.4.B.7, is added to Chapter 35, Planning and Land Use, of the Pleasant Hill Municipal Code to read as follows:

- “7. The method for measuring the distance referenced in Sections 35-20.4.B.3, B.4 and B.5 shall not apply when the adult business location or proposed adult use is separated from a religious institution or other adult businesses by I-680. Where the I-680 separation exists, the distance shall first be measured along a straight line extended between two points from the nearest exterior wall housing the adult use or proposed adult use to the closest improved pedestrian connection above or beneath I-680 or roadways which are accessible by pedestrians or vehicles, whichever is less. The measurement shall continue under or over I-680 along the improved pedestrian connection or roadway and proceed along a straight line to the nearest exterior wall of the other adult business or religious institution. An “improved pedestrian connection” is defined as an elevated overhead pedestrian access bridge or sidewalk or below street grade pedestrian access tunnel below finished grade of I-680.”

**Section 3.** This ordinance shall be effective thirty (30) days after its adoption.

Within fifteen (15) days after the passage of this ordinance, the City Clerk shall cause it to be posted in the four places designated by resolution of the City Council.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Pleasant Hill held on the 7<sup>th</sup> day of June, 2004.

ADOPTED and ordered posted at a meeting of the City Council of the City of Pleasant Hill, held on the 21<sup>st</sup> day of June, 2004, by the following vote:

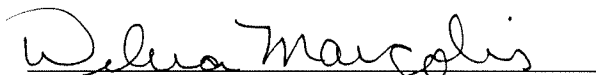

AYES:	Durant, Harris, Williamson, Escover
NOES:	Angeli
ABSENT:	None
ABSTAIN:	None

  
CHARLES C. ESCOVER, Mayor

ATTEST:

  
DORIS P. NILSEN, City Clerk

APPROVED AS TO FORM:

  
DEBRA S. MARGOLIS, City Attorney  
CERTIFIED A TRUE COPY  
DEPUTY CITY CLERK, CITY OF PLEASANT HILL

L:\DEBBIE\Adult Use Issues\6-21-04 CC ordinance (Final).doc